

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 90-131-T - ORDER NO. 90-822

September 17, 1990

IN RE:	Application of National Motorcoach	)	ORDER
	Systems, Inc., 74 Bruce Road, Greenville,	)	GRANTING
	SC 29605, for a Class C Charter Certifi-	)	CERTIFICATE
	cate of Public Convenience and Necessity.	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application filed on February 27, 1990, by National Motorcoach Systems, Inc. (the Applicant) for a Class C Charter Certificate of Public Convenience and Necessity to transport passengers as follows:

BETWEEN POINTS AND PLACES IN SOUTH CAROLINA.

Subsequent to the initiation of this proceeding, the Commission Staff instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. The Notice of Filing was duly published in the State Register.

Petitions to Intervene were timely filed by Dutch-Boy Motor Coach, Inc. (Dutch-Boy) and D. R. Wismer d/b/a Sea Island Stages of Beaufort/Hilton Head (Sea Island Stages).

Pursuant to notice duly given, a hearing was held at the Offices of the Commission on August 22, 1990, the Honorable Marjorie Amos-Frazier presiding. The Applicant was represented by Rex L. Carter, Esquire; Intervenor Dutch-Boy was not represented by counsel; and the Commission Staff was represented by H. Clay Carruth, Staff Counsel. Intervenor Sea Island Stages did not appear.

Testifying on behalf of the Applicant were: Harl Bundy Brewster, resident of Greenville, South Carolina, President of the Applicant; Henry Homer Chism, resident of Greenville, a certificated charter bus motor carrier; and Jack Pharr, owner of Travelease Tours of Charlotte, North Carolina.

Testifying on behalf of Intervenor Dutch-Boy was Harold McElmurray, President of Dutch-Boy Motor Coach, Inc. of North Augusta, South Carolina.

Mr. McElmurray moved that he be allowed to represent Intervenor Dutch-Boy and be accorded the right to cross-examine the Applicant's witnesses. The Motion was denied, whereupon Mr. McElmurray moved for a continuance of the matter until Dutch-Boy could retain counsel. That Motion, being resisted by the Applicant, was also denied.

The Applicant, after presentation of the direct examination testimony of Mr. Brewster, moved to dismiss the Petition to Intervene filed by Dutch-Boy on the basis that the Petition to Intervene was filed in the name of "Dutch-Boy Motor Coach, Inc." and the certificate of public convenience and necessity held by

Dutch-Boy is held in the name "Dutch-Boy Lines, Inc." The Chairman took the Motion of the Applicant under advisement.

The Commission concludes that the difference between the name of the motor carrier as it may appear on a certificate of public convenience and necessity issued by this Commission and the name in which a Petition to Intervene in a proceeding before this Commission is filed is not, in the present circumstances, a matter of such magnitude as to adversely affect the standing of Intervenor Dutch-Boy to appear and participate in the instant matter as a party of record. The Commission, therefore, denies the Applicant's Motion to Dismiss the Petition to Intervene of Dutch-Boy.

According to S.C. Code Ann., §58-23-330 (1989 Cum. Supp.), an applicant applying for a certificate to operate as a motor vehicle common carrier may be approved upon a showing that the applicant is fit, willing and able to appropriately perform the proposed service; provided, however, if an intervenor shows or if the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application.

If an application is denied, another application may not be made until at least six months have elapsed since the date of the denial.

#### FINDINGS OF FACT

Upon consideration of the information contained in and attached to the Application, and the testimony of the witnesses, the Commission finds the following facts:

1. That Harl Bundy Brewster, President of the Applicant, has been in the bus business most of his adult life, having started driving a bus at the age of nineteen (19) and having worked in the business for approximately 20 years.

2. That Mr. Brewster has been employed by American Coach in Atlanta, Georgia, and Airport Limousine Service, before going into business for himself for a 2-3 year period, after which time he was employed by Travelways in Greenville, South Carolina, until January 1990, when he quit to begin business as the Applicant.

3. That the Applicant has passenger motor carrier authority for interstate commerce issued by the Interstate Commerce Commission (ICC) and registered with the Public Service Commission of South Carolina, at which the Applicant has on file evidence of liability insurance in the required limit of liability.

4. That the Applicant currently operates twelve (12) buses.

5. That the Applicant has, since its inception, furnished charter passenger service for churches and schools.

6. That the Applicant has on several occasions leased buses to other motor carriers for use in South Carolina intrastate commerce.

7. That the Applicant had, as of January 1, 1990, fixed assets valued at \$552,622.00.

8. That the Applicant has had no accidents or safety problems since beginning operations.

9. That the Applicant systematically "checks its drivers out", inquiring into driving records, past employment, and making

sure that they can demonstrate bus driving proficiency.

10. That the Applicant uses its own employees to inspect its equipment, all being qualified for the task.

11. That other motor carriers of passengers have, from time to time, solicited help from the Applicant when they were overbooked.

12. That there is currently a need for the Applicant's proposed motor carrier services.

#### CONCLUSIONS OF LAW

Section 58-23-330, supra, imposes upon an applicant the burden of demonstrating that it is fit, willing and able to appropriately perform the proposed motor carrier services. The Statute imposes upon any intervenor(s) the burden of demonstrating that the public convenience and necessity is already being served by those certificated motor carriers authorized to provide the motor carrier services for which the applicant seeks authority.

Based on the facts found hereinabove, as well as the evidence in the entire record herein, the Commission finds and concludes that the Applicant has demonstrated its fitness, willingness and ability to appropriately perform the proposed motor carrier services, while the Intervenor has not demonstrated that the public convenience and necessity is already being served by it and/or other certificated motor carriers authorized to provide the proposed motor carrier services.

Therefore, the Commission reaches the following conclusions of law:

1. That the Applicant is fit, willing and able to appropriately perform the proposed motor carrier services.

2. That the public convenience and necessity is not already being served as to the motor carrier services proposed in the instant Application.

IT IS THEREFORE ORDERED:

1. That the Application of National Motorcoach Systems, Inc. for a Class C Charter Certificate of Public Convenience and Necessity be, and hereby is, approved.

2. That the Applicant file the proper license fees and other information required by S.C. Code Ann., Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. That upon compliance with S.C. Code Ann., Section 58-23-10, et seq (1976) as amended, and the applicable provisions of R.103-100 through R.103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a certificate shall be issued to the Applicant authorizing the motor carrier services granted herein.

4. That prior to compliance with such requirements and receipt of a certificate, the motor carrier services authorized herein may not be provided.

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5. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



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Chairman

ATTEST:



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Executive Director

(SEAL)